

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SABA MAHMOOD, individually and on
behalf of all similarly situated
individuals,

Plaintiff,

v.

BERBIX INC., a Delaware corporation,

Defendant.

Case No.

State Case No. 22LA00000112

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant Berbix Inc. (“Berbix”) hereby provides notice of removal of this action from the Circuit Court of Lake County, Illinois, to the United States District Court for the Northern District of Illinois, Eastern Division.

I. BACKGROUND

1. On April 4, 2022, Plaintiff Saba Mahmood filed a putative class action complaint (“Complaint”) against Berbix in the Circuit Court of Lake County, captioned *Mahmood v. Berbix Inc.*, No. 22LA00000112 (the “State Court Action”).

2. Berbix was served with a copy of the Complaint on April 7, 2022.

3. This Notice of Removal is timely under 28 U.S.C. § 1446(b)(1) because it is filed within 30 days of the date that Berbix was served with the Complaint.

4. Pursuant to 28 U.S.C. § 1446(a), all process papers, pleadings, and orders from the State Court Action are attached as **Exhibit 1**.

5. Plaintiff alleges that Berbix violated the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* (“BIPA”), in the course of collecting biometric data to provide companies

with customer identity verification services. (*See* Compl., Ex. 1 ¶¶ 2–5.) Specifically, Plaintiff alleges that Berbix requires customers to upload a photo ID (such as a driver’s license or passport) and a separate photo of their face (a “selfie”). (*Id.* ¶ 4.) Plaintiff further alleges that Berbix then “uses facial recognition technology” to “extract[] biometric facial geometry scans from the picture on the consumer’s ID and the separate ‘selfie’ picture, to match the faces appearing in the photo ID and selfie.” (*Id.* ¶ 5.) Plaintiff also alleges that Berbix “collects the facial geometry of its clients’ customers in Illinois without first obtaining those individuals’ informed written consent and without providing written disclosures regarding its purpose for collecting their biometrics and disclosing its retention practices.” (*Id.* ¶ 13.) Berbix disputes these allegations.

II. JURISDICTION UNDER THE CLASS ACTION FAIRNESS ACT, 28 U.S.C. § 1332(D)

6. This Court has jurisdiction over this putative class action under the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d).

7. CAFA “expands jurisdiction for diversity class actions by creating federal subject matter jurisdiction if: (1) a class has 100 or more class members; (2) at least one class member is diverse from at least one defendant (‘minimal diversity’); and (3) there is more than \$5 million, exclusive of interest and costs, in controversy in the aggregate.” *Roppo v. Travelers Com. Ins. Co.*, 869 F.3d 568, 578 (7th Cir. 2017). “To meet this burden, a defendant seeking to remove to federal court must file in the district court a notice of removal ‘containing a short and plain statement of the grounds for removal.’” *Id.* (quoting 28 U.S.C. § 1446(a)). Berbix satisfies each element under CAFA and the burden for removal.

8. First, the putative class contains 100 or more members. The Complaint does not allege the size of the putative class. (*See* Compl. ¶ 31 (“[T]he exact number of members of the Class is currently unknown to Plaintiff[.]”)) However, based on an initial review of its records, Berbix alleges that the putative class contains more than 1,000 members.

9. Second, minimal diversity is satisfied because Plaintiff is a citizen of Illinois (*id.* ¶ 17) and Berbix is incorporated in Delaware (*id.* ¶ 16). Berbix maintains its principal place of business in California.

10. Third, the amount in controversy exceeds \$5 million. Plaintiff alleges that Berbix’s violations of BIPA were “knowing and willful, or were at least in reckless disregard of the statutory requirements.” (*Id.* ¶ 46.) An intentional or reckless violation of BIPA carries a \$5,000 statutory penalty. 740 ILCS 14/20(2). Because the class is larger than 1,000 members, the total amount in controversy in this case exceeds \$5 million.¹

III. DIVERSITY JURISDICTION UNDER 28 U.S.C. § 1332(A)

11. This Court also has diversity jurisdiction over cases where, *inter alia*, the “matter in controversy” (1) “exceeds the sum or value of \$75,000, exclusive of interest and costs”; and (2) “is between . . . citizens of different States[.]” 28 U.S.C. § 1332(a)(1). Both requirements are satisfied here.

12. First, complete diversity exists because Plaintiff and Berbix are citizens of different states. As described in paragraph 9 above, Plaintiff is a citizen of Illinois and Berbix is incorporated in Delaware, with its principal place of business in California.

13. Second, the amount in controversy exceeds \$75,000. “[U]nless recovery of an amount exceeding the jurisdictional minimum is legally impossible, the case belongs in federal court.” *Grinnell Mut. Reins. Co. v. Haight*, 697 F.3d 582, 585 (7th Cir. 2012) (internal quotation marks omitted) (emphasis added).

14. Here, Plaintiff alleges that in August 2020, she “registered with one of Defendant’s clients, SilverCar by Audi,” “which requires a fast onboarding process involving identity and age

¹ Berbix disputes that Plaintiff can satisfy the requirements of Federal Rule of Civil Procedure 23 and disputes that Plaintiff’s claim can be maintained as a class action.

verification.” (Compl. ¶ 22.) She further alleges that she was required to upload her driver’s license and a “selfie” photograph to Berbix’s identity verification platform as a condition of renting from SilverCar. (*Id.* ¶ 23.) She alleges that Berbix scanned these photographs to obtain her facial geometry data, without obtaining the requisite consents under BIPA. (*Id.* ¶¶ 24–25.)

15. Plaintiff seeks \$5,000 for each willful or reckless BIPA violation and \$1,000 for each negligent BIPA violation. (Prayer for Relief (d), (e).) She additionally seeks a declaration that Berbix has violated BIPA and an injunction requiring Berbix’s future compliance. (*Id.* (b), (c).) Berbix vigorously disputes that it is not in compliance with BIPA. However, the amount in controversy here exceeds the \$75,000 jurisdictional threshold, inclusive of each of Plaintiff’s demands (by way of illustration and not limitation, if the Court rules for Plaintiff, it could enter an injunction directing Berbix to implement changes to its technology, triggering compliance costs). *See Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 89 (2014) (a removing defendant must only “plausibl[y] alleg[e] that the amount in controversy exceeds the jurisdictional threshold”); *see also Abraham v. State Farm Mut. Auto. Ins. Co.*, No. 19-CV-3028, 2020 WL 1433782, at *3 (N.D. Ill. Mar. 24, 2020) (a defendant can allege in its removal notice that the amount in controversy is met, *inter alia*, based on the “value of the injunctive or declaratory relief . . . from either party’s viewpoint.”).

IV. VENUE

17. Venue is proper in the Northern District of Illinois, Eastern Division, because the State Court Action, pending in the Circuit Court of Lake County, is within the jurisdictional confines of this Court. 28 U.S.C. § 1446(a).

V. NOTICE

18. Berbix will provide written notice of the filing of this Notice of Removal to Plaintiff and to the clerk of the Circuit Court of Lake County. 28 U.S.C. § 1446(d).

Berbix hereby removes this action to this Court based on the grounds stated above.

Dated: May 9, 2022

Respectfully submitted,

DEFENDANT BERBIX INC.

By: /s/ Robert E. Earles

Robert E. Earles

By Its Attorneys

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